IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.349 of 2005
DIVISIONAL MANAGER ,ORIENTAL I
Versus
KAMALWATI DEVI & ORS
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14 23.12.2008 I.A.No. 486 of 2006 is a petition for condoning the delay of 9 days in filing of this appeal.

Upon hearing the learned counsel for both sides and on consideration of the grounds as taken in the petition, the delay is condoned and the I.A. petition is allowed.

The appeal is directed against the order dated 21st May 2005 of the 3rd Additional Sessions Judge cum-Motor Vehicles Accident Claims Tribunal, Muzaffarpur passed in Clams Cased No. 215 of 2001 whereby the appellant Insurance Company has been ordered to pay an interim sum of Rs.50,000/- (fifty thousand) to the claimants under Section 140 of the Motor Vehicles Act (in short, 'the Act').

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According to the case of the claimants, the deceased had died as a result of accident caused by rash and negligent driving of the driver of a tractor which was insured by the appellant Insurance Company.

In the impugned order the learned Claims Tribunal mentioned that the appellant Insurance Company had filed a petition dated 9th May 2005 wherein it was admitted that the appellant was insurer of the tractor. During argument learned counsel for the appellant submitted that as per the F.I.R. itself, the decease was traveling as a passenger on the truck and that the Insurance Policy did not cover the risk with regard to any passenger traveling on the tractor

and, thus, there was breach of the terms of insurance policy and, therefore, the appellant Insurance Company was not liable to pay even the interim compensation. In support of his contention learned counsel cited the decision of the Hon'ble Supreme Court in the case of Yallwwa and others Vs. National Insurance Company Limited and another reported in 2007 ACJ 1934. At Para 11 of the judgment it was held that one of the defences available to the insurer is breach of condition specified in the policy. When such a defence is raised, the Tribunal is required to go into said question. Section 140 of the Act does not contemplate that an Insurance Company shall also be liable to deposit the amount when it has no liability whosoever in terms of sub-section (2) of section 147 of the Act.

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Thus in view of what has been laid down by the Hon'ble Supreme Court the Tribunal is prima facie required to go into the question of the defence as raised by the Insurance and as available to him under sub-section (2) of Section 147 of the Act, before an order of interim compensation under Section 140 of the Act is passed.

No doubt when a defence under sub-section (2) Section 147 of the Act is raised, the Tribunal is prima facie required to go into such question before passing an order under Section 140 of the Act, but, in the instant case, the impugned order shows that by fling an application dated 9th May 2005 the appellant Insurance Company had admitted that it was the insurer of the tractor involve ed in the accident. There is nothing to show that any specific defence under sub-section (2) of section 147 of the Act was raised by the appellant

before the Tribunal.

During hearing learned counsel for the appellant tried to refer to the copy of W.S. as was available with him but even in that W.S. any such specific defence could not be pointed out.

Thus hearing I do not find any kind of illegality or irregularity in the impugned order. There is no scope of interference. In the result, the appeal fails.

Learned counsel for the appellant submitted that the statutory amount of Rs.25,000/- (twenty five thousand) was deposited at the time of filing of this appeal. He seeks permission to withdraw the said amount.

He is permitted to do so.

Appeal **dismissed.**

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Jay/

(C.M.Prasad,J)